



Bureau of Medi-Cal Fraud & Elder Abuse

State of California Department of Justice



Office of Attorney General
Bill Lockyer

December 18, 2003

ELECTRONIC FILING

SERVED ON ALL PARTIES VIA VERILAW

Robert Alba, Court Clerk
United States District Court, District of Massachusetts
John Moakley United States Courthouse
1 Courthouse Way
Boston, MASS 02210

1455 Frazee Road, Ste. 315
San Diego, CA
92108

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RE: MDL 1456 - In re Pharmaceutical Industry Average Wholesale Price Litigation,
State of California et al. v. Abbott Laboratories, Inc. et al., Dist. Court Mass. No.
1:03-cv-11226-PBS

Dear Mr. Alba:

Please find attached for electronic filing The State of California's Application to File Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims; The State of California's Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims; Exhibit A, Declaration of Thomas A. Temmerman, Sr. Assistant Attorney General In Support of Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims, as well as the Certificate of Service.

A courtesy copy will be filed via UPS along with an extra copy for the Court to conform and return in the enclosed self-addressed stamped UPS envelope. Thank you for your courtesy and attention to this request.

Sincerely,


WILLIAM S. SCHNEIDER
Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse

For BILL LOCKYER
Attorney General for the State of California

WSS/agl
Enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION) Master File No. 01-12257-PBS
)
) (Matter to be submitted on
) the pleadings)
THIS DOCUMENT RELATES TO:)
State of California, et al v. Abbott Laboratories et al)
CASE #: 1:03-cv-11226-PBS) Judge Patti B. Saris
)

THE STATE OF CALIFORNIA'S APPLICATION TO FILE
SUPPLEMENTAL BRIEF REGARDING THE ISSUE
OF FEDERAL PREEMPTION OF REBATE CLAIMS

California's motion to dismiss its Medicaid rebate claims without prejudice, along with its Motion to Remand, were heard before this court on December 12, 2003. The Court heard California's motion at the same time as it heard the motions to dismiss filed by the defendants in the Montana and Nevada cases. Federal preemption over Medicaid rebate fraud claims was raised in the Montana and Nevada pleadings but not raised in the context of California's arguments. However, during the hearing, the Court inquired about the effect on California's rebate claims and its pending motion to dismiss if the court found that the rebate claims were preempted by federal law whereby only the federal government could prosecute the claims.

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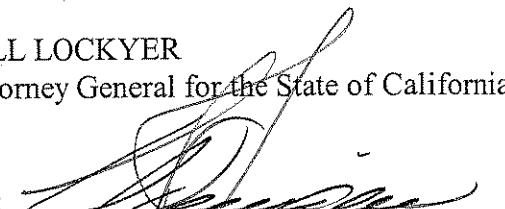
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As California has not briefed this issue, it respectfully submits and request that the court accept and review these supplemental points and authorities on the issue of preemption over rebate fraud claims. See attached Exhibits A & B.

Dated: December 18, 2003.

Respectfully submitted,

BILL LOCKYER
Attorney General for the State of California

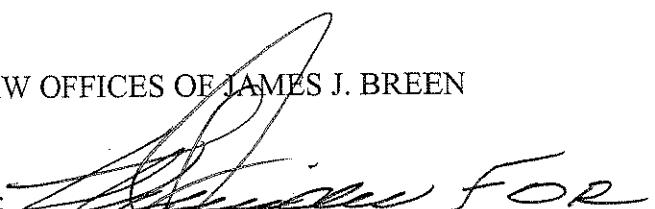
By: 

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Attorneys for the Plaintiff, State of California

Dated: 12/18/03

LAW OFFICES OF JAMES J. BREEN

By: 

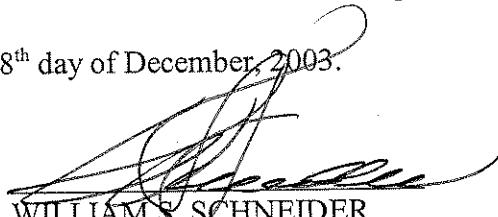
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CERTIFICATE OF SERVICE

I hereby certify that I, William S. Schneider, Deputy Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse, for the State of California, caused a true and correct copy of the foregoing:

1. The State of California's Application to File Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims;
2. Exhibit A - The State of California's Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims; and,
3. Exhibit B - Declaration of Thomas A. Temmerman, Sr. Assistant Attorney General, In Support of Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims.

to be served electronically on counsel of record on the Master Service List, pursuant to Section E of the Case Management Order No. 2, this 18th day of December, 2003.



WILLIAM S. SCHNEIDER
Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse
State of California